

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

BETTERGOLF.NET L.L.C.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 06-CV-234-GKF-PJC
)	
NATCOM, INC. and GERALD W. POPE,)	
an individual,)	
)	
Defendants.)	

OPINION AND ORDER

Before the court is the Motion for Summary Judgment of defendant Gerald W. Pope ("Pope") [Dkt. No. 22].

Summary judgment is proper only if “there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(c). The burden of showing that no genuine issue of material fact exists is borne by the moving party. *Zamora v. Elite Logistics, Inc.*, 449 F.3d 1106, 1112 (10th Cir. 2006). A court must draw all reasonable inferences from the evidence in favor of the nonmoving party. *Id.*

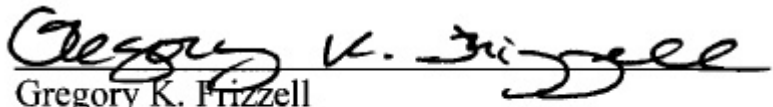
Pope contends that defendant Natcom, Inc. (“Natcom”) is the only obligor under the asset purchase agreement, that plaintiff BetterGolf.net, L.L.C. (“BetterGolf”) never transferred assets to Pope because the backdated asset purchase agreement between BetterGolf and Pope occurred after the assets had been transferred to Natcom and Natcom never re-transferred the assets to BetterGolf.

When the court views the evidentiary materials submitted in conjunction with the motion for summary judgment in favor of the nonmoving party, it appears that genuine issues of material fact exist. Such issues include, but are not necessarily limited to: whether the original contract was superceded by a subsequent, substitute contract; whether the parties and/or principals for the parties

intended that the subsequent contract was to cover fully the subject matter of the former contract and to operate as a rescission of and substitute for the former contract; whether Pope subsequently treated the subsequent agreement as valid and enforceable and represented it as such to federal tax authorities; and whether the original written contract was modified and/or altered by the subsequent written contract.

WHEREFORE, defendant Gerald W. Pope's Motion for Summary Judgment [Dkt. #22] is denied.

IT IS SO ORDERED this 10th day of April 2007.


Gregory K. Frizzell
United States District Judge
Northern District of Oklahoma